

Amanda Kuklinski; AZ Bar No. 035676

WEILER LAW PLLC

5050 N. 40th St., Suite 260

Phoenix, AZ 85018

Tel & Fax: 480.442.3410

akuklinski@weilerlaw.com

Attorneys for Plaintiff

Britain Fincher

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Britain Fincher,

Plaintiff,

v.

Wanzek Construction, Inc.;

Defendant.

Case No.

VERIFIED COMPLAINT

(Jury Trial Requested)

Plaintiff Britain Fincher, for her Verified Complaint against Defendant Wanzek Construction, Inc., hereby alleges as follows:

PARTIES

1. Plaintiff is currently a resident of Yuma County, Arizona. At all times relevant hereto, Plaintiff was a resident of Maricopa County, Arizona.

2. Upon information and belief, Defendant Wanzek Construction, Inc. is a North Dakota corporation which is registered to conduct business and is currently doing business in the State of Arizona.

JURISDICTION AND VENUE

3. The majority of acts complained herein occurred in Maricopa County, Arizona, and this Court has jurisdiction over the parties and subject matter set forth in this

1 Complaint pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e.

2 4. This Court has federal question subject matter jurisdiction over Plaintiff's
3 claims pursuant to 28 U.S.C. § 1331 in that the claims set forth in this Complaint arise
4 under federal law.
5

6 5. This Court has supplemental jurisdiction over Plaintiff's state law claims
7 pursuant to 28 U.S.C. § 1367 because they are sufficiently related to her federal claims to
8 form part of the same case or controversy.
9

10 6. The employment practices alleged to be unlawful were committed within,
11 and had their primary effect in, the jurisdiction of the United States District Court for the
12 District of Arizona.

13 7. At all relevant times, Defendant Wanzek Construction, Inc. has continuously
14 been an employer, jointly employing fifteen or more employees within the meaning of Title
15 VII.
16

17 8. On December 6, 2021, Plaintiff filed a Charge with the Equal Employment
18 Opportunity Commission (EEOC) alleging sex discrimination and retaliation.
19

20 9. On or about October 12, 2022, Plaintiff received a Right to Sue Notice from
21 the EEOC.

22 10. Plaintiff has exhausted all administrative and statutory prerequisites
23 necessary to commence this action, and therefore jurisdiction is proper.
24

25 **FACTUAL ALLEGATIONS**

26 11. In October 2019, Defendant hired Plaintiff as Senior Procurement Manager
27 of its Solar Division.

28 12. In her role as Senior Procurement Manager – Solar Division, Plaintiff

1 reported directly to Procurement Director Matt Behr (“Behr”).

2 13. On February 28, 2020, at Defendant’s annual conference, during a
3 presentation given by Plaintiff and Behr to the solar division, Vice President of the Solar
4 Division Troy Ochoa (“Ochoa”) repeatedly interrupted and argued with Plaintiff.
5

6 14. When Fincher proposed that all supplier contact should run through the
7 procurement team rather than the construction team so procurement could manage
8 relationships with suppliers, Ochoa interrupted her to ask if she thought “the guys” (i.e.,
9 construction) were “not smart enough” to speak with suppliers.
10

11 15. Following this presentation, Ochoa called Fincher a “fucking bitch” and told
12 her that her behavior was “disgraceful.” He told her that the entire solar team hated her and
13 she needed to “ingratiate herself” to them.
14

15 16. Of the approximately fifty-person solar team, Plaintiff was one of
16 approximately two total women.

17 17. On March 1, 2020, Plaintiff sent an email and had a phone call with Behr
18 informing him of Ochoa’s comments on February 28, 2020.
19

20 18. On April 13, 2020, Plaintiff received her first performance review from Behr.

21 19. The review was overall positive, and Plaintiff received a score of “meets
22 expectations” in every category. Though she was not yet eligible for Wanzek’s bonus
23 structure, Behr gave her a discretionary bonus based on her good performance.
24

25 20. Just nine days later, on April 24, 2020, Behr placed Plaintiff on a
26 Performance Improvement Plan (“PIP”).

27 21. Behr told Plaintiff that Ochoa instructed him to place her on the PIP and,
28 while he had pushed back, he ultimately could not refuse.

1 22. After receiving this PIP, Plaintiff complained to HR representative Tanya
2 Knutson (“Knutson”) about the PIP and Ochoa’s treatment of her.

3 23. Specifically, Plaintiff told Knutson that Ochoa was harassing and verbally
4 assaulting her and forwarded Knutson the email she sent to Behr on March 1, 2020.

5 24. Plaintiff told Knutson that if Wanzek terminated her at the end of her PIP she
6 wanted it known that it has nothing to do with her performance but because Ochoa is a man
7 who has a problem with a woman who will not bow down to him.
8

9 25. Following the issuance of Plaintiff’s PIP, Plaintiff had no check-ins or
10 follow-up meetings with Behr to discuss her progress.

11 26. After thirty days, Behr told Plaintiff she was released from the PIP.

12 27. In September 2020, when Wanzek moved to a new building, Ochoa refused
13 to provide Fincher with an office, forcing her to sit in a cubicle, despite that there were
14 empty offices available.
15

16 28. On information and belief, the other two Senior Procurement Managers, both
17 of whom are male, had their own offices.
18

19 29. In the following months, Ochoa would often sit in the empty office across
20 from Plaintiff’s desk and watch her work.
21

22 30. On March 29, 2021, Behr gave Plaintiff a performance review with an overall
23 rating of “competent.”
24

25 31. When Plaintiff disagreed with her low scores, Behr informed her that Ochoa
26 had to approve her performance review and these ratings were a result of his input.

27 32. In June 2021, Plaintiff had to end a vacation early to fix the mistake of a new
28 subordinate, Tim Ree (“Ree”), when he refused to do so.

1 33. On or about June 30, 2021, Plaintiff asked Ree to issue a purchase order so
2 his prior mistake would not be repeated.

3 34. Ree repeatedly ignored Plaintiff's directive, and Plaintiff sternly told him he
4 needed to do it immediately.

5 35. Later that day, Plaintiff received an email from Ree, in all caps, stating "I
6 NEED TO SPEAK TO YOU NOW."
7

8 36. In a closed-door meeting, Ree told Plaintiff that the entire team was sick of
9 her, that she was "a bitch," and threatened to complain to human resources about her.

10 37. Following this confrontation, Ree continued to either ignore Plaintiff or snap
11 at her when forced to interact.

12 38. When Ree took paid time off on July 2, 2021, he informed Ochoa but not
13 Plaintiff, his direct supervisor.

14 39. After business hours on July 8, 2021, Behr called Plaintiff to inform her that
15 someone had filed an HR complaint against her for creating a hostile work environment
16 and instructing her to work from home the following day.

17 40. On July 9, 2021, Behr called Plaintiff to inform her that "senior
18 management" decided to terminate her employment effective immediately for creating a
19 hostile work environment, inappropriate workplace behavior, and conduct unbecoming a
20 Wanzek employee.

21 41. Behr was unable to provide examples of this alleged conduct.

22 42. Upon information and belief, Behr discouraged a female employee from
23 applying for the Senior Procurement Manager of the Solar Division position, telling her
24 that the company should hire a male in the position so Ochoa would not "do the same
25
26
27
28

1 thing” to her as he did to Plaintiff.

2 43. Following her termination from Wanzek, Plaintiff had a very difficult time
3 finding alternative employment in the solar industry despite her extensive experience.

4 44. For several positions, Plaintiff was scheduled for interviews which the
5 prospective employer later canceled.

6 45. After one job offer was withdrawn, one of Plaintiff’s contacts in the industry
7 informed her that he heard Wanzek was saying negative things about her.

8 46. Plaintiff learned from a friend in the industry, David Waller, that in March
9 2022, Ochoa told other Wanzek employees that Plaintiff practiced witchcraft and
10 threatened to kill Ochoa.

11 47. Plaintiff also later learned from a former Wanzek supplier, Brady Coucher,
12 that Ree told him Plaintiff was fired for being “on pills” and “drugged up.”

13 48. All of these claims against Plaintiff were false.

14 **COUNT I**
15 **SEX DISCRIMINATION IN VIOLATION OF TITLE VII**

16 49. Plaintiff reasserts and realleges each and every paragraph, *supra*, as if
17 restated herein.

18 50. Plaintiff belongs to a protected class in that she is a woman.

19 51. Plaintiff was qualified for her position as Senior Procurement Manager of the
20 Solar Division.

21 52. Other employees outside of Plaintiff’s protected class were treated more
22 favorably.

23 53. Because of her sex, Plaintiff was subjected to adverse employment actions
24 including, *inter alia*, termination.

1 by spite and ill will.

2 65. Moreover, Defendants consciously disregarded a substantial risk that their
3 conduct might significantly harm Plaintiff.
4

5 66. Defendants are vicariously liable for the conduct of Ochoa and Ree because
6 their conduct was in the scope of their employment and for the benefit of Defendants.

7 67. Defendants are liable for the conduct of Ochoa and Ree under the doctrine
8 of *Respondeat Superior*.
9

10 68. As a result, Plaintiff was damaged by the disruption to her relationships or
11 expectancy with her current or prospective employers.

12
13 **COUNT IV**
14 **DEFAMATION**

15 69. Plaintiff reasserts and realleges each and every paragraph, *supra*, as if
16 restated herein.

17 70. Defendant and its agents made false statements of fact regarding Plaintiff to
18 prospective employers.
19

20 71. These false statements harmed Plaintiff's reputation and lowered her in the
21 estimation of the community.

22 72. False statements claiming Plaintiff was involved in illegal activity are
23 defamation *per se* and damages are presumed.
24

25 73. Defendant is liable for the conduct of Ochoa and Ree because their conduct
26 was in the scope of their employment with Defendant and made for the benefit of
27 Defendant.
28

74. Defendant is liable for the conduct of Ochoa and Ree under the doctrine of

1 *Respondeat Superior.*

2 75. Defendant's conduct was egregious and done with malice.

3 76. As a result of Defendant's conduct, Plaintiff has been damaged.

4 **CONCLUSION AND PRAYER FOR RELIEF**

5
6 **WHEREFORE**, Plaintiff prays that this Court order such relief as is necessary to
7 make her whole, including, without limitation:

- 8 A. Declaring the acts and practices complained of herein are in violation of Title
9 VII of the Civil Rights Act.
- 10 B. Declaring that Defendant made defamatory statements;
- 11 C. Declaring that Defendant tortuously interfered with Plaintiff's contractual
12 relationships or business expectancy.
- 13 D. An award of damages for all counts in an amount to be proven at trial;
- 14 E. An award of punitive damages in an amount to be proven at trial;
- 15 F. An award of back pay and front pay;
- 16 G. Pre- and post-judgment interest;
- 17 H. Reasonable attorneys' fees, costs and other expenses;
- 18 I. For such other relief this Court deems just.

19
20 **JURY DEMAND**

21 Plaintiff hereby demands a trial by jury of all issues so triable.

22
23
24
25 **RESPECTFULLY SUBMITTED** January 9, 2023.

26 **WEILER LAW PLLC**

27 By: /s/Amanda Kuklinski
28 5050 N. 40th St., Suite 260
Phoenix, AZ 85018
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2023, I electronically transmitted the foregoing document to the United States District Court, District of Arizona, Court Clerk, using the CM/ECF System. All counsel of record are registrants and are therefore served via this filing and transmittal.

By: /s/Ashley Peschke

VERIFICATION

Plaintiff Britain Fincher declares under penalty of perjury that she has read the foregoing Verified Complaint and is familiar with the contents thereof. The matters asserted therein are true and based on her personal knowledge, except as to those matters stated upon information and belief, and as to those matters, she believes them to be true.

Britain Fincher

Britain Fincher